

Attorney Docket No.: J6848(C)
Serial No.: 10/667,824
Filed: September 22, 2003
Confirmation No.: 1014

REMARKS

Applicant's attorney thanks the Examiner for the courtesy of an Office Interview. General agreement was reached on a number of matters. These are listed in the Interview Summary record and reflected in the amendment and comments below.

The present amendment reflects matters discussed at the Interview and is intended to be responsive to the outstanding Office Action.

Claims 1-8 were rejected under 35 U.S.C. § 112, first paragraph. Enablement was said to be lacking for "preventing" in-grown hair.

Applicant and the Examiner at the Interview agreed that claim 1 should be amended by replacing the term "preventing" with "controlling". Support is found in the specification at page 3, paragraph [0006].

Independent claims 1 and 9 have also been amended to remove the word "neutralized" which applicant considers redundant to the term "salt". Further, independent claim 9 has newly been introduced. This claim parallels original claim 1 except providing further definition of the method and focusing the in-grown hair active agent to "consist essentially of" the non-hydroxy C₂-C₄₀ di-dicarboxylic acid salt. A series of dependent claims similar to the original dependent claims have also been added. Still further, specific di-carboxylic acids have been enumerated in new claims 19-20. Support for these acids is found at page 3, paragraph [0008] of the original specification.

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Claims 1-8 were provisionally rejected for obviousness-type double patenting over claims 1-6 of co-pending application S/N 10/800,810 (U.S. Patent Publication 2005/0202054 A1).

Applicant herewith submits a Terminal Disclaimer which is believed to overcome this rejection.

Claims 1-8 were rejected for obviousness-type double patenting over claims 1-11 of co-pending application S/N 10/767,679 (U.S. Patent Application Publication 2004/0202689 A1) in view of U.S. Patent 4,867,967 (Crutcher) and JP 07206626 (JP) or in view of U.S. Patent 7,067,556 (Bhagwat et al.) in view of JP. Applicant traverses these rejections.

U.S. Patent Application Publication 2004/0202689 A1, which is the primary reference of combined cited art, is not considered to be prior art against the present claims. Both the subject matter disclosed in the U.S. patent application publication and the claimed invention were, at the time the claimed invention was made, subject to an obligation of assignment to the same entity (Unilever Home & Personal Care USA, Division of Conopco, Inc.).

Claims 1-8 were said to be rejected as an invention not patentably distinct from claims 1-5 of commonly assigned S/N 10/767,679. The Examiner has noted that this is also a Provisional obviousness-type double patenting rejection. It is believed that the Terminal Disclaimer herewith submitted also overcomes this rejection.

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Claims 1-8 were rejected under 35 U.S.C. § 103(a) as unpatentable over S/N 10/767,679 (U.S. Patent Application Publication 2004/0202869) in view of U.S. Patent 4,867,967 (Crutcher) and JP 07206626 (JP) or in view of U.S. Patent 7,067,556 (Bhagwat et al.) in view of JP. Applicant traverses this rejection.

U.S. Patent Application Publication 2004/0202689 A1, which is the primary reference of combined cited art, is not considered to be prior art against the present claims. Both the subject matter disclosed in the U.S. patent application publication and the claimed invention were, at the time the claimed invention was made, subject to an obligation of assignment to the same entity (Unilever Home & Personal Care USA, Division of Conopco, Inc.).

Claims 1 and 3-7 were rejected under 35 U.S.C. § 103(a) as unpatentable over JP 0706626 (JP) in view of U.S. Patent 4,867,967 (Crutcher) or JP in view of U.S. Patent 7,067,556 (Bhagwat et al.). Applicant traverses this rejection.

JP is a document in Abstract form introduced by the Examiner. This Abstract is relatively uninformative. It was agreed at the Interview that the Examiner would obtain a full translation to better understand the meaning of this reference. The Examiner graciously promised to fax to the undersigned attorney a copy of the translation as soon as it becomes available.

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Applicant presently responds to the extent of what is disclosed in the Abstract. JP discloses a composition containing ethanol and dicarboxylic acid salts reputed to show good antiseptic effects while not irritating the skin. Ethanol is a well known antiseptic. From the Abstract it is not at all evident that dicarboxylic acid salts provide antiseptic effects. Indeed, it may be that the dicarboxylic acid salts ameliorate irritation caused by the antiseptic activity of ethanol. The JP Abstract provides no clear link between antimicrobial activity and dicarboxylic acid salts.

In the event a full translation reveals some activity (other than anti-irritant function), it still would appear that ethanol is an essential element for antiseptic purposes. Applicant's new independent claim 9 has been introduced to address this issue. The qualifier of "consisting essentially of " is intended to eliminate formulas with ethanol or similar agents that are necessary to give antiseptic activity to formulas with dicarboxylic acid salts.

Crutcher and Bhagwat et al. were introduced as disclosures that pseudofolliculitis barbae is treatable with antimicrobial agents. Neither reference reveals dicarboxylic acid salts. The Examiner notes that since JP reveals dicarboxylic acid salts as being antiseptic, there would be motivation for their use in controlling pseudofolliculitis barbae (in-grown hair).

Applicant considers the connection extremely tenuous. The JP Abstract has an antiseptic composition formulated with very substantial amounts of ethanol. It is common knowledge that ethanol is strongly antimicrobial. Dicarboxylic acid salts are utilized interactively with ethanol according to the reference. This interaction is not

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clearly enhancement of antiseptic effects; it could well be seen that dicarboxylic acid salts are anti-irritant agents alleviating the negative effects of ethanol.

Even in a most favorable interpretation benefiting the Examiner's position, it would be evident that dicarboxylic acid salts alone are not very effective antiseptic agents. One needs ethanol. From this view it would appear that dicarboxylic acid salts are not particularly powerful antimicrobial agents in their own right. For this reason, those skilled in the art would not expect dicarboxylic acid salts to have sufficient efficacy for use against in-grown hair resulting from a shaving process.

Claims 2 and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over JP 07206626 (JP) in view of U.S. Patent 4,867,967 (Crutcher) or JP in view of U.S. Patent 7,067,556 (Bhatwat et al.), and further in view of U.S. Patent 5,641,495 (Jokura et al.). Applicant traverses this rejection.

Jokura does not remedy the basic deficiency of the primary reference combination. There is no teaching in Jokura that dicarboxylic acid salts have any antimicrobial properties, especially for use in a method against in-grown hair resulting from shaving. The only reference which even tangentially suggests any connection is JP. However, JP (at least the Abstract) provides no unequivocal disclosure that dicarboxylic acid salts have any antiseptic effect. Ethanol is the antiseptic. Dicarboxylic acid salts are placed in the formulation quite logically to provide anti-irritation efficacy to avoid the astringent nature of ethanol. At the very least, any hint of antimicrobial activity by dicarboxylic acid salts is not revealed as a strong efficacy. Those skilled in the art seeking to solve pseudofolliculitis barbae working on an antimicrobial theory,

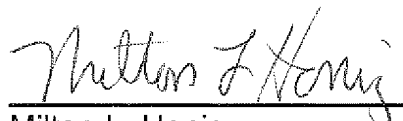
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would certainly not select materials such as dicarboxylic acid salts which are not reported to have a strong antimicrobial function. JP does not teach or suggest strong antimicrobial or antiseptic properties for dicarboxylic acid salts.

Based on the foregoing considerations, a combination of JP in view of Crutcher or JP in view of Bhagwat et al., and further in view of Jokura et al. would not lead the skilled technician to the presently claimed invention.

In view of the foregoing amendment, Terminal Disclaimer and comments, applicant requests the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Milton L. Honig", is written over a horizontal line.

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